IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13264 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHOGILAL RANCHHODDAS MEHTA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13264 of 2003

MR DP KINARIWALA for Petitioner No. 1

MR LB DABHI, ASST. GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 16/03/2004

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP Shri L.B.Dabhi for the respondent authorities. At the

request of the learned advocates, the petition is finally heard today.

2. The petitioner has been aggrieved by an order dated 21.6.2003 passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat, whereby the order dated 14.3.2002 passed by the Collector, Valsad, has been confirmed. The Collector, Valsad, under his order dated 14.3.2002, had rejected an application for N.A. use given by the petitioner for part of lands bearing survey Nos. 457, 459, 493(part), 496 and 497 situated at village Pardi.

3. The facts giving rise to the present petition, in a nutshell, are as under:

3.1 Along with others, the petitioner is an owner of agricultural lands bearing survey Nos. 457, 459, 493(part), 496 and 497 situated at village Pardi. According to the case of the petitioner, he owns 30,000 sq. metres of land out of the aforestated lands as there are two other persons having right in the land referred to hereinabove. The petitioner wanted to convert 9,999 sq meters of the said agricultural land to Non-agricultural and, therefore, under his application dated 8.1.2002 he requested for conversion of the said land into N.A. land. The said application was rejected by the Collector, Valsad, under his order dated 14.3.2002 because proceedings under the provisions of Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as 'the Act') in respect of the said land were pending at the relevant time.

3.2 Being aggrieved by the said order passed by the Collector, Valsad, the petitioner filed a revision application under the provisions of sec. 211 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as 'the Code'). The said revision application has been rejected by an order dated 21.6.2003.

4. Learned advocate Shri Kinariwala appearing for the petitioner has submitted that the petitioner is entitled to have 21,000 sq.metres as his share of land even if he loses in the proceedings under the provisions of the Act, which are pending before the revisional authority at present. According to him, the petitioner wants only 9,999 sq.metres of land to be converted into N.A. land and, therefore, he has submitted that the Collector ought not to have rejected his application on the ground of pendency of the proceedings under the Act

because, even if the petitioner finally loses his case before the revisional authority, he would be entitled to have 21,000 sq. metres of land and in that event the petitioner would part with his remaining land, which is not converted into N.A. land.

5. On the other hand, the learned AGP has tried to support the orders passed by the authorities below by saying that, because of the pendency of the proceedings under the Act, the application submitted by the petitioner was rightly rejected by the Collector. It has been submitted by him that if, ultimately, the petitioner loses in the ceiling proceedings, there would be some complications because he will have to part with the land in favour of the government.

6. I have heard the learned advocates.

7. It is not in dispute that the petitioner is entitled to 21,000 sq.metres of land even if he loses in the proceedings initiated under the Act. If that is the undisputed position, the petitioner's application for conversion of 9999 sq.metres of land into N.A. land could not have been rejected by the Collector because, in any case, the petitioner is entitled to have 21,000 sq.metres of land, and upon losing in the ceiling proceedings, which are pending before the revisional authority, the petitioner can retain the land on which he has put up construction and the rest of the land can be handed over to the government.

8. The aforestated position could not be disputed by the learned AGP.

9. As the reasons given by the Collector, Valsad, for rejecting the N.A. application are not sound and legally tenable, the impugned orders dated 14.3.2002 and 21.6.2003 passed by the Collector, Valsad, and by the revisional authority respectively, are quashed and set aside. The Collector, Valsad, shall reconsider the application submitted by the petitioner dated 8.1.2002 afresh and shall pass an appropriate order thereon as soon as possible. He shall not reject the said application on the ground of pendency of proceedings under the Act.

The petition is, therefore, disposed of as allowed. Rule is made absolute with no order as to costs. D.S. permitted.

(A.R. Dave, J.)

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